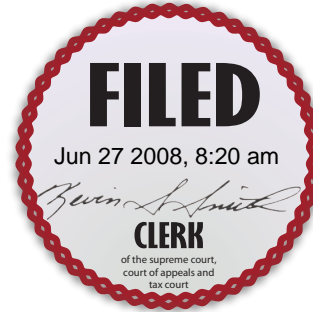


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

BEDFORD EAR, NOSE & THROAT
CLINIC, INC.,

Appellant,

vs.

REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE
DEVELOPMENT and
BRANDIE A. GILSON,

Appellees.

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No. 93A02-0712-EX-1104

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT
OF WORKFORCE DEVELOPMENT

The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Lawrence A. Dailey, Member
Cause No. 07-R-2650

June 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant Bedford Ear, Nose & Throat Clinic, Inc. ("Clinic") appeals a ruling of the Review Board of the Indiana Department of Workforce Development ("Review Board") affirming the Administrative Law Judge's ("ALJ") determination that Brandie Gilson voluntarily left her employment with the Clinic with good cause. We affirm.

FACTS AND PROCEDURAL HISTORY

Gilson was employed as a receptionist at the Clinic from December 11, 2006, until April 24, 2007. The Clinic was owned and operated by Dr. Prasoon K. Samaddar and usually employed a nurse, a receptionist, and an assistant. The Clinic's main office was located in Bedford, but it also had three satellite offices in Bloomington, Salem, and Washington. The employees generally traveled from the Bedford office to the satellite offices as required. Oftentimes, the employees rode with Dr. Samaddar on trips to the satellite offices but were paid mileage if they chose to drive separately.

Approximately one month after beginning to work at the Clinic, Gilson was traveling with Dr. Samaddar to one of the satellite offices. During this trip, Dr. Samaddar struck up a

conversation with Gilson about her sex life, specifically inquiring into the number of her past sexual partners. Gilson attempted to ignore this conversation because it made her uncomfortable. On yet another occasion, while Gilson and Dr. Samaddar were alone in the Clinic's Bloomington office, Dr. Samaddar walked up to Gilson, grabbed her face, and kissed her on the lips. After Dr. Samaddar kissed her, Gilson immediately walked away and went into the bathroom. Gilson never confronted Dr. Samaddar about either of these situations, but she did discuss the situations with one of her fellow employees whom she believed to be the office manager. Her fellow employee suggested that, to the extent possible, Gilson should avoid being alone with Dr. Samaddar.

On April 24, 2007, Gilson and Dr. Samaddar were scheduled to visit the Clinic's Bloomington office. They were late in leaving the Bedford office, so Dr. Samaddar, who was concerned about being late for his appointments, drove far in excess of the speed limit. Gilson was uncomfortable with Dr. Samaddar's excessive speed but did not express her discomfort because she did not feel that she could criticize Dr. Samaddar. Later that evening, Gilson's husband phoned Dr. Samaddar's office and informed Dr. Samaddar that Gilson would not return to work at the Clinic.

Following her separation from the Clinic, Gilson applied for unemployment benefits, claiming that she voluntarily left her employment at the Clinic for good cause in connection with her work pursuant to Indiana Code section 22-4-15-1 (2006). Gilson established that the Clinic was her last separating employer prior to her application for unemployment benefits. The ALJ conducted a hearing on October 2, 2007, and determined that Gilson was

entitled to unemployment benefits. The Clinic appealed to the Review Board. On November 28, 2007, the Review Board affirmed the ALJ's decision. This appeal follows.

DISCUSSION AND DECISION

The Clinic contends that the Review Board erred in finding that Gilson voluntarily terminated her employment at the Clinic for good cause. On appeal from an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. *Browning-Ferris Indus. v. Review Bd. of the Indiana Dept. of Workforce Dev.*, 693 N.E.2d 1351, 1353 (Ind. Ct. App. 1998). We are bound by the Review Board's resolution of all factual matters; thus, we neither reweigh evidence nor reassess witness credibility. *Id.* Rather, we consider only the evidence most favorable to the Review Board's decision and the reasonable inferences to be drawn therefrom. *Id.* If there is substantial evidence of probative value to support the Review Board's conclusion, it will not be set aside. *Id.*

The Review Board found that Dr. Samaddar had made inappropriate sexual comments to and unwanted sexual advances toward Gilson, and, as a result, Gilson had good cause to voluntarily terminate her employment. Indiana Code section 22-4-15-1 establishes that there are circumstances under which an employee is entitled to receive unemployment benefits if the employee can prove that she left her employment voluntarily with good cause. *Wasylik v. Review Bd. of Ind. Employment Sec. Div.*, 454 N.E.2d 1243, 1245 (Ind. Ct. App. 1983). In order to prove that she had good cause to leave her employment, the employee must establish that her reasons for abandoning her employment would impel a reasonably prudent person to

terminate her employment under the same or similar circumstances and that these reasons were objectively related to her employment. *Id.* at 1246.

Here, Gilson worked as a receptionist at the Clinic. The evidence establishes that Dr. Samaddar made unwelcome sexual comments to and unwanted sexual advances toward Gilson and that these comments and advances made Gilson uncomfortable. Gilson had discussed the incidents with a fellow employee, whom she believed to be the Clinic's office manager. Her fellow employee suggested that to the extent possible, Gilson should attempt to avoid being alone with Dr. Samaddar, but this was difficult because Dr. Samaddar owned the Clinic and was the only doctor practicing at the Clinic. Gilson attempted to continue her employment at the Clinic, but Dr. Samaddar's behavior continued to make her uncomfortable. In light of the circumstances surrounding Gilson's continued employment at the Clinic, we conclude that the sexual comments and sexual advances made by Dr. Samaddar, as found by the Review Board, are such that would impel a reasonably prudent person to terminate their employment under similar circumstances and that Gilson's reasons for terminating her employment were objectively related to her employment as a receptionist for Dr. Samaddar's clinic.¹ Furthermore, to the extent that the Clinic claims that Gilson lacked good cause to voluntarily terminate her employment because she failed to notify her

¹ To the extent that the Clinic claims that Dr. Samaddar's conduct did not amount to sexual harassment, we find this claim unpersuasive because Gilson was not required to prove that she was sexually harassed, but rather that the reasons for which she voluntarily terminated her employment were such that under similar circumstances, a reasonable person would feel compelled to act likewise. *See Wasylik*, 454 N.E.2d at 1246.

employer of her dissatisfaction with her working conditions, we conclude that Indiana law has no such requirement for establishing good cause.²

The judgment of the Review Board is affirmed.

BARNES, J., and CRONE, J., concur.

² The Clinic based its argument on authority from other jurisdictions. *See In re Claim of Mullen*, 301 A.D.2d 936 (N.Y. App. Div. 2003); *Thurman v. Labor Indus. Relations Com.*, 706 S.W.3d 601 (Mo. Ct. App. 1986). Upon review of the applicable Indiana law, we find these foreign authorities unpersuasive.